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No. 85-2131

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

LEVY AUTO PARTS OF CANADA, *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY IN SUPPORT OF PETITION

MILTON EISENBERG, P.C.
(Counsel of Record)
JACK B. GORDON
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
(A Partnership Including Professional Corporations)
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 639-7000

PLATO CACHERIS
HUNDLEY & CACHERIS, P.C.
1914 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 293-0224

WALTER J. BONNER
BONNER & O'CONNELL
900 17th Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 452-1300

5PP

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The government's response wholly avoids the merits of petitioners' contentions that trial in the Eastern District of Virginia would violate their fundamental constitutional right to a trial in the State and district where the offense allegedly was committed.[1] Instead, the government suggests that the Court should deny review on the ground that an acquittal in Virginia would moot petitioners' venue contentions, while a conviction would enable petitioners to present their claims to this Court at a later date.

Neither assumption is correct. An acquittal will not remedy the violations of the Constitution at issue since Art. III, § 2 and the Sixth Amendment prohibit trial in a place other than where the offense was committed. Neither an acquittal nor post-conviction reversal can alleviate or remedy the burden of being tried

1. The government's failure to respond to petitioners' statement of reasons for granting the writ is unfair. If the response does not, as it should not, persuade the Court to dispose of this petition, the government effectively solicits the Court's invitation to express its views a second time.

in an unconstitutional venue.[2] The Court previously has agreed to review venue issues before trial where the issue was presented in the same procedural posture as in this case. In *Johnston* v. *United States*, 351 U.S. 215 (1956), for example, the Court granted certiorari to review a judgment of the United States Court of Appeals for the Third Circuit reversing a judgment of the United States District Court for the Eastern District of Pennsylvania that had dismissed an indictment for lack of venue. Venue questions "touch closely the fair administration of criminal justice and public confidence in it" and "raise deep issues of public policy." *United States* v. *Johnson*, 323 U.S. 273, 276 (1944). It is no answer to the charge that petitioners are being forced to stand trial in an unconstitutional forum to suggest that consideration of the issues raised by the petition be delayed because that trial may result in an acquittal.

Conviction of the petitioners also provides no assurance that the issues now before the Court will be preserved. In this situation the government is likely to argue that any violation of the venue provisions of the Constitution was "harmless," *see, e.g., Milton* v. *Wainwright*, 407 U.S. 371 (1972); *Harrington* v. *California*, 395 U.S. 250 (1969); *Chapman* v. *California*, 386 U.S. 18 (1967), or cured by a trial free from error, *see, e.g., United States* v. *Mechanik*, 106 S. Ct. 938 (1986). If that argument were accepted, neither petitioners nor anyone else could ever enforce the requirements of Art. III, § 2 or the venue provisions of the Sixth Amendment and violation of this important constitutional requirement would be irremediable.

Moreover, under the government's proposal, petitioners, if convicted, would once again have to present the same issue to the

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2. *Cf. Abney* v. *United States*, 431 U.S. 651, 662 (1977) ("[E]ven if the accused is acquitted, or, if convicted, has his conviction ultimately reversed on double jeopardy grounds, he has still been forced to endure a trial that the Double Jeopardy Clause was designed to prohibit."); *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982) (official immunity); *Nixon* v. *Fitzgerald*, 457 U.S. 731 (1982) (Presidential immunity); *Helstoski* v. *Meanor*, 442 U.S. 500 (1979) (Speech or Debate Clause immunity).

Fourth Circuit, which has already held against them. This process would be inefficient and would inject further delay in petitioners' right to be free from an indictment alleging venue in a district where the offense cannot constitutionally be tried.[3] Such a convoluted process impairs the fair and efficient administration of justice.

3. Thus, the government's concern that "further interlocutory review at this time would cause additional delay in the final resolution of the charges against petitioners" cannot be taken at face value. Indeed, the government made no effort to bring petitioners to trial after the indictment was returned and likely would have continued to make no effort to this day had petitioners not appeared voluntarily, two years later, to move for dismissal.

Accordingly, for the reasons stated herein and in the petition, petitioners submit that a writ of certiorari should be granted.

Respectfully,

/s/ MILTON EISENBERG

MILTON EISENBERG, P.C.
(Counsel of Record)
JACK B. GORDON
FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON
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Washington, D.C. 20004
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/s/ PLATO CACHERIS

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HUNDLEY & CACHERIS, P.C.
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(202) 293-0224

/s/ WALTER J. BONNER

WALTER J. BONNER
BONNER & O'CONNELL
900 17th Street, N.W.
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